

ATTACHMENT



EARTHJUSTICE

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ENVIRONMENTAL LAW CLINIC AT UNIVERSITY OF DENVER
ENVIRONMENTAL LAW CLINIC AT STANFORD UNIVERSITY

April 9, 2004

Via Facsimile, Followed by U.S. Mail

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Re: *Washington Toxics Coalition v. EPA*, Case No. 01-0132C
Implementation of Injunction's Point-of-Sale Notification Requirements

Dear Counsel:

I am writing to bring to your attention issues arising in connection with implementation of the January 22, 2004 injunction's point-of-sale notification requirements that we believe warrant a status conference and involvement of the Court. As you know, the injunction requires EPA to develop mandatory point-of-sale notifications to be posted in urban home and garden stores within the range of listed salmon. The effective date for these obligations was April 5, 2004, yet an informal survey of home and garden stores has revealed scant posting of the notifications and confusion concerning the injunction's requirements. We believe the following need to be addressed to improve compliance.

First, the notice sent by CropLife (attached) is confusing at best. It recites the injunction's requirement that CropLife distribute the point-of-sale notifications, but it does not describe the context in which this distribution is taking place. For example, the notice does not explain that the court required the posting of these notifications in connection with the presentation for sale of products containing seven pesticides. Nor does the notice list the pesticides or the products that contain them. The notice directs the diligent reader to multiple websites to attempt to glean this pertinent information. It is not surprising that retailers have expressed lack of knowledge or confusion about the point-of-sale notification requirements.

Second, both the notice and EPA's Federal Register notice to retailers and state agencies direct retailers to an industry website to obtain copies of the point-of-sale notifications. CropLife Notice to Lawn & Garden Product Retailers; Exhibit 2 to Federal Defendants' Status Report (Mar. 22, 2004). That website – www.pestfacts.org – has been developed by RISE, which represents

705 SECOND AVENUE, SUITE 203, SEATTLE, WA 98104-1711
T: 206.343.7340 F: 206.343.1526 E: ejuswa@earthjustice.org W: www.earthjustice.org

pesticide producers and suppliers and advocates on their behalf. While two clicks link the viewer to the point-of-sale notification, the opening page:

invites the viewer to "Have Your Say on the ESA!" which urges the viewer to support a proposed regulation that would weaken protection for endangered species from pesticides;

presents a fact sheet entitled "Why Pesticides?" touting the benefits of pesticides without disclosing hazards; and

provides a link to a poll purporting to support the caption "Most Americans Believe Environmental Groups are 'Too Extreme.'"

The site contains additional information about particular pests and pesticide remedies, as well as a link to an article describing this lawsuit as a "nuisance and distraction." Excerpts from the website are attached.

We do not believe it is appropriate to direct retailers to this biased site as the mechanism for distributing the point-of-sale notifications. We are particularly troubled that EPA's Federal Register notice directs retailers to the industry site rather than EPA's own site. Moreover, we have checked EPA's website repeatedly throughout this week in vain for the point-of-sale notification. This situation promises to force retailers to the industry site if they want to locate and produce the point-of-sale notifications.

Third, the notification (attached) adds a statement that was not compelled by the Court order, namely

This point of sale notification was produced in compliance with a January 22, 2004 Court Order, to notify urban users about the potential for some pesticides to harm fish.

We were surprised to see this additional statement on the notification. When we printed the notification in color, we were even more surprised to see that, in addition to highlighting the word "some," this entire statement appears in bold lettering that makes it stand out more than the narrative mandated by the January 22, 2004 order. Given that the order requires that the mandatory "statement shall be highly visible to the purchasers," we believe the added statement should not be in bolder print that makes it more striking and eye-catching than the mandatory statement. We ask that the electronic version of the notification be modified either to delete the added statement or to reduce it to less visible and prominent font.

In sum, we believe a new notification to retail outlets is necessary, one that identifies the covered pesticides and products and clearly describes the notification requirement and its purpose, without requiring resort to outside documents and websites. The information needed to comply with the order should be on EPA's website, not an industry site that is devoted to promoting the use

Counsel
April 9, 2004
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and sale of pesticides. Finally, we have repeatedly asked to be consulted in the development of actions to comply with the Court's orders in this case, but these requests have been refused. Had we been consulted, some of these difficulties could have been avoided. We believe such consultation is necessary from this point on.

Sincerely,

A handwritten signature in cursive script that reads "Patti Goldman". The signature is written in dark ink and is positioned above the printed name.

Patti Goldman

Enclosures

ATTACHMENT 1



1156 15th Street, NW
Suite 400
Washington D.C. 20005

April 2, 2004

Notice to Lawn and Garden Product Retailers:

At the request of our outside counsel and pursuant to the January 22, 2004 Court Order in Washington Toxics Coalition v. The United States Environmental Protection Agency (EPA), we would like to inform you of the following information:

Court Order dated January 22, 2004

The court order states " Within 60 days of the effective date of this Order, Intervenor-Defendants will distribute the point of sale notification developed by EPA in quantity, for point of sale distribution, to sales outlets where lawn and garden products are sold in Urban Areas subject to this Order." Please find in this mailing, the point of sale notification developed by EPA that is referenced in the court order on page 11, lines 13-16. The applicable products are listed in the Court Order on page 10, line 20 through page 11 line 1. The Urban Areas are designated in "EXHIBIT 3" of the court order. You can find a complete copy of the January 22, 2004 Court Order at the United States Environmental Agency's (EPA) website, <http://www.epa.gov/espp>, under the link Washington Toxics Coalition v. EPA.

This communication to Retail Outlets of Lawn and Garden Products is pursuant to this notification requirement in the January 22, 2004 Court Order.

Additional copies of this communication or the Point of Sale Warning may be printed directly from the website www.pestfacts.org.

Established in 1933, CropLife America represents the developers, manufacturers, formulators and distributors of plant science solutions for agriculture and pest management in the United States. CropLife America member companies produce, sell and distribute virtually all the crop protection and biotechnology products used by American farmers.

ATTACHMENT 2

PestFacts.org

Information Resource

Looking for an answer to a pesty problem? Click here

[contact](#)
[site map](#)
[search](#)

[Pests 101](#)
[Pesticides](#)
[News](#)
[Reading Room](#)
[About RISE](#)
[Interesting Links](#)
[Pesticide FAQs](#)

April 9, 2004

search pestfacts.org

Search

Did you know

Have Your Say on ESA!

[Click here for more details](#)

Hidden, hungry invader threatens city of Mardi Gras City fights Formosan termites

For decades, the historic buildings -- in the city that's home to jazz and jambalaya -- have fought for survival against one of the most voracious and destructive forces in the termite kingdom.

[click here to view the story](#)

Most Americans Believe Environmental Groups are "Too Extreme"
[click here for the poll results](#)

Additional Headlines:

- > [Long Island man dies of West Nile](#)
- > [Stopping the real pests](#)
- > [West Nile virus hit hard, didn't hit home](#)
- > [Rats prompt Chicago school cleanings](#)
- > [SARS-Weary China to Sweep out Pests Called the "Four Dangers"](#)
- > [Bedbugs making a comeback](#)
- > [Colorado county to spend \\$680,000 on mosquito control in 2004](#)
- > [Science rejects anti-pesticide claim](#)
- > [West Nile Virus fact sheet and informational web site from USDA](#)

**URBAN NOTIFICATION
COURT ORDER**
 January 22, 2004
 Washington Toxics Coalition
 The United States Environmental Protection Agency
 (WA, OR and CA Locations)
[Click here for more information](#)

Why Pesticides?

Click on the links below to 4-page fact sheet focusing the problems they pose and methods for their control.

[PDF Version](#) - larger file with graphics suitable for re-printing

[HTML Version](#) - smaller downloads more quickly

Summer is fast approaching along with the season's fresh crop of mosquitoes.

Click here to visit westnilevirusfacts.org a comprehensive look at West Nile virus and the responsible mosquitoes.

Other RISE Resources

Visit these other online resources RISE has developed to keep you informed and up-to-date:

> **Why Pesticides?**

A 4-page fact sheet focusing on pests, the problems they pose and effective methods for their control.

> **Westnilevirusfacts.org**

An information resource on West Nile Virus and the responsible control of mosquitoes.

> **Schoolpestfacts.com**

A site focusing on children's health, IPM, pests and the safe use of pesticides.

> **Read the Label First!**

A campaign to improve labels and help consumers purchase, use, and dispose of products more safely and responsibly.

> **Lawn Management**

Read this fact sheet for homeowners with information on the use of lawn fertilizers and the protection of water quality.

> **Phosphorous, Urban Runoff and Aquatic Weeds**

Discusses the benefits of turf as well as the importance of phosphorus in healthy turf management.

Click on the logo to the right to view and download valuable information on the risks pests pose to children.

PEST



Did you know
In 2003, there were n
cases of West Nile V
US resulting in more
deaths.

Get the facts with
Questions and Answ
Pesticides, court
Grounds Mainte
Magazine

back to top

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RISE, 1156 15th Street, NW, Suite 400, Washington, DC 20005
phone: 202-872-3860 fax: 202-463-0474

privacy statement

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Blue Pumpkin Group

<http://www.bluepumpkingroup.com>



Click on the envelope to go directly to an online site
to prepare Letters and Emails to your regulators
in support of the ESA Counterpart Regulations!

**Please click on the links below for more information and resources regarding the
EPA Endangered Species Act:**

[Endangered Species Counterpart Regulation](#)

[Talking Points: EPA Endangered Species Act Counterpart Regulations Rulemaking](#)

[Press Release: RISE Statement on the Proposed Endangered Species Counterpart
Regulation](#)

[ESA Counterpart Regulations Rulemaking - download letter copy](#)

[Unnecessarily wide net cast by pesticide ban ensnares state's farmers: Opinion piece](#)

Why Pesticides? Here's Why:

Real-life incidents illustrate the essential role pesticides play in health protection and safety. Following are some events that demonstrate the benefits of pesticides and why these products need to be available to the public.



■ A Surf City, Calif. family was overcome at their home by an angered nest of adult paper wasps. Two teenagers received multiple stings on arms, hands and face. Wasp stings cause discomfort such as itching, pain and redness. Among those allergic to such attacks, insect stings can result in headaches, paralysis and even death.

■ A Johns Hopkins University study cites mouse allergen as significant in the increased rate of childhood asthma. Skin tests of asthmatic children in major U.S. cities found that nearly 20 percent were sensitive to such allergens. Another study has linked cockroaches with asthma. Nearly 40 percent of inner-city children were found allergic to droppings and dander from these insects.



■ Recent invasions of highly aggressive Africanized bees, known as killer bees, have brought hazards to popular tourist areas. At least 25 nests were recently cleared from Las Vegas attractions. The bees cluster on sides of buildings, in wall cracks, around water or near picnic areas.

■ Fire ants now infest more than 310 million U.S. acres in 12 Southeastern states and continue to spread westward at a rate of 120 miles per year, according to the *Journal of Allergy and Clinical Immunology*. Annually, more than half of the infested area residents are stung.

■ Hawaii health officials confirmed 35 cases of mosquito-borne dengue fever in the fall of 2001. Authorities believed the dengue fever virus was imported by a resident who traveled to Tahiti or American Samoa, where the disease is endemic. The virus has a 5 percent fatality rate in those infected through a mosquito bite.

■ Students at schools in the Los Angeles area experienced a different type of growing pain—noxious weeds sprouting through cracks in asphalt playgrounds. The growth was attributed to an area-wide ban on herbicide use at schools by the Los Angeles



Unified School District. Costly hand labor resulted in temporary control, but many campus officials say effective, lasting control is not possible without herbicide use.

"Integrated Pest Management is a sustainable approach to managing pests by combining biological, cultural, physical and chemical tools in a way that minimizes economic, health and environmental risks."

110 STATE ST. 2ND FLOOR, NEWTON, MA 02459-1099

Battling Pests for Health and Safety

The best approach to pest control is an overall strategy that balances prevention, sanitation and maintenance. Integrated Pest Management or IPM is a common sense set of measures that allows for a variety of approaches to control pests, including use of pesticides if and when they are necessary.

Our battle against pests may never be totally won, but modern pest control products and methods have given us the edge. They allow us to continue to win major victories—victories that provide improved health for adults and children, assure safeguards against disease, promise more comfortable living and yield the most bountiful food supply man has ever known.

For more information about pests and pest control, visit www.pestfacts.org, western@pestfacts.org or schoolpestfacts.org

Responsible Industry for a Sound Environment

1155 15th Street NW, Suite 400
Washington, DC 20005
Phone: (202) 872-3860

Fax (202) 463-0474
www.pestfacts.org



WHY Pesticides?

Keeping Harmful Pests in Check

Pesticides play an important role in protecting our health and safety. The thousands of illness cases and hundreds of deaths caused by West Nile virus in our country is one reason why pesticides must remain a viable option for our protection.

Larvicides and adulticides

used to control and eliminate mosquitoes that carry West Nile virus have been proven effective with minimal risks to humans, animals or the environment.



Other pests, such as cockroaches, stinging and biting insects, ticks, rats, mice and weevils are much more than a nuisance. They spread diseases, inflict injury, irritate allergies, trigger asthma and damage our food. Safe and responsible pesticide use helps fight these pests and eliminates the serious health and safety risks they pose.



■ "Pesticides are extremely important to human survival. They are essentially environmental medicines to correct pest imbalances such as for crop protection, but they are also needed as public health tools."

■ "We need a wide array of pesticides to combat any vector-borne diseases that may arise, or any re-emergence of existing diseases such as malaria, dengue, West Nile virus, etc."

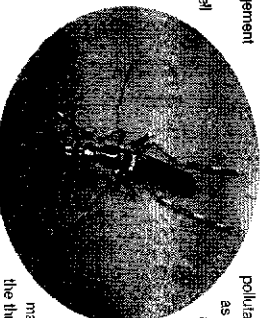
■ "Certainly, integrated pest management and other strategies are in order, but in many cases insect populations explode and are unmanageable by non-chemical methods. We must have pesticides readily available for use."

Dr. Jerome Gotsfeld, medical entomologist,
University of Mississippi Medical School

The Many Benefits of Specialty Pesticides

Specialty pesticides are pest management tools used in and around homes, businesses and public areas as well as on lawns, flowers and trees.

They're used in commercial greenhouses and nurseries on sports turf such as golf courses and for vegetation management along roadways, railroads and utility rights-of-way. Here are just a few of the benefits of specialty pesticides:



pollutants, retards the spread of fire and acts as a cooling agent around the house while also providing space for numerous family activities. Herbicides, insecticides and fungicides help protect turfgrass so it will grow into a healthy lawn. One small lawn produces enough oxygen each day for a family of four. Well-managed turf protects water, and because plants absorb CO₂, the maintenance of healthy turf helps reduce the threat of global warming.

Structural Pest Control

Products used by pest management professionals play a critical role in protecting the public's health and property. In fact, they frequently are the first line of defense in preventing a wide range of vector-borne diseases including West Nile Virus, encephalitis, rabies, Lyme disease and hantavirus. More recently, cockroaches have been implicated as a cause of childhood asthma, reaffirming the importance of keeping homes and apartments pest-free.

Turf and Ornamentals

A well-maintained landscape can add up to 15 percent to a property's value. Healthy turfgrass filters groundwater, absorbs

Nonius Weed Control

Using herbicides to remove weeds along roadsides makes for safer travel. Utility companies use herbicides as an economical tool to ensure reliable electric power, while also improving wildlife habitat.

Nurseries and Greenhouses

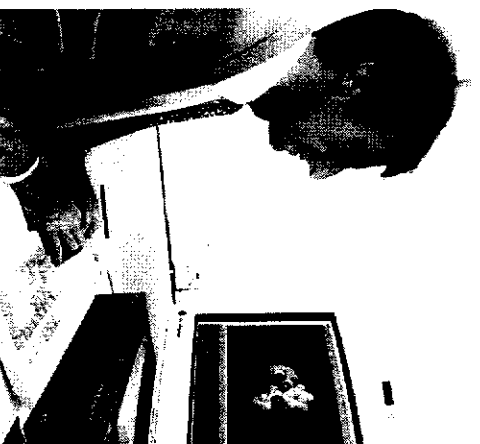
Commercial growers of ornamental flowers and plants continuously monitor for the presence of pests and use pesticides to control damaging insects, such as aphids, thrips and whiteflies and diseases that damage plant health and quality. By eliminating these pests, growers are able to provide ornamental plants of the highest quality while minimizing the cost for retailers and consumers.

Forestry

Herbicides are used in forest management to reduce the amount of brush and weeds so that timber production is maximized. This allows us to enjoy a wide range of economically priced wood products like paper and lumber. Herbicide use in forest management provides improved wildlife habitat as well as a great place for family activities like camping, picnics and bird watching. Using herbicides in forests also reduces the risk of forest fires by reducing the build up of fire-prone weeds and brush on the forest floor.

Aquatics

Excessive aquatic weeds in ponds, lakes, reservoirs, canals, streams and rivers can have detrimental effects on the wetlands environment and on water usage. Recreational activities such as boating, fishing and swimming, as well as the appearance of the water, can be adversely impacted. Wetlands habitat for wildlife can be destroyed, hydroelectric screens can be clogged, navigation lanes restricted, water quality can be significantly reduced and property values can fall sharply because of too much aquatic vegetation. Herbicidal products, along with mechanical, cultural and biological alternatives, are used to effectively manage aquatic weeds.



Pesticides are Thoroughly Reviewed and Tested for Use

Pesticide products used to control insects, weeds and diseases have been thoroughly tested for effects on health and the environment. The U.S. Environmental Protection Agency (EPA) regulates and enforces pesticide testing, registration, labeling and use. State and local governments cooperate in applicator training and certification and may have additional pesticide requirements.

To register a pesticide for public use, the EPA must conclude, based on all of the required studies, that the pesticide may be used as directed without undue risk to people or the environment. All pesticides undergo rigorous testing. The EPA requires up to 120 tests, many to evaluate environmental and health impacts. The testing evaluation EPA registration and label approval takes 8 to 10 years and costs between \$150 million and \$165 million. Only one in 140,000 potential products makes it from the research lab to the market.

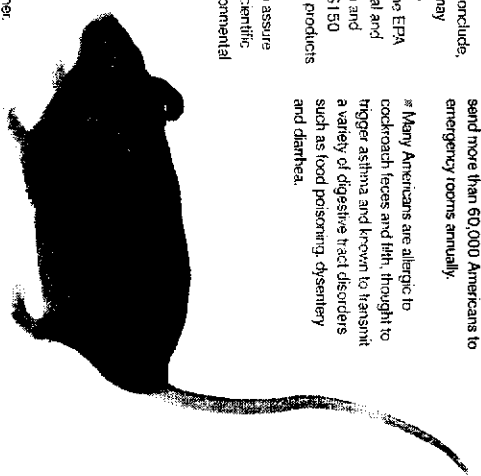
In addition, EPA monitors and evaluates pesticides to assure that products already on the market continue to meet scientific and regulatory requirements for health, safety and environmental effects.

The Pest is the Problem

The risk of becoming seriously ill from rodent, tick or insect bites is real. The fact is, in inner cities, suburbs and rural areas alike, such pests can cause serious injury and illness. However, when using pesticides to control these pests, it's important to always follow label instructions and handle pesticides in a responsible manner.

The Pest is the Problem: Points to Ponder

- Each year, more than 45,000 people, mostly infants and children, are treated for rat bites. Such rodents are responsible for numerous diseases, including hantavirus, plague, food poisoning, typhus and other serious complaints. Approximately 20 percent of cases of unknown origin are suspected of having been caused by rodents growing on electrical wiring.
- More than half of Americans are allergic to poison ivy, poison oak, poison sumac and other noxious plants that cause severe skin rashes, irritation, itching and blistering.
- Mosquitoes are carriers of West Nile virus, malaria, dengue fever, encephalitis and other vector-borne diseases, all of which can cause serious health risks and death.
- Termites attack 800,000 homes annually, causing more than \$1.5 billion in damage. The Formosan termite, introduced from the Orient during World War II, costs New Orleans alone some \$300 million annually in damage and treatment.
- Lyme disease, transmitted by the deer tick, infects some 12,500 Americans each year. Related health care in 1998 cost \$3.7 million, according to the American Lyme Disease Foundation. Ticks also spread Rocky Mountain spotted fever.
- More people die each year from insect stings than from snakebites. Venomous stings from fire ants send more than 60,000 Americans to emergency rooms annually.
- Many Americans are allergic to cockroach feces and skin. Thought to trigger asthma and known to transmit a variety of digestive tract disorders such as food poisoning, dysentery and diarrhea.





Dr. Henry I. Miller
Fellow, The Hoover
Institution

Email Author

Biographical

Stopping the Real Pests

By Henry I. Miller, MD

Font Size:

Published 02/12/2004

E-Mail Bookmark Print Save

It's great news that most Americans now identify themselves as environmentalists. Unfortunately, a small number have embraced environmentalism with religious fervor, basing their beliefs more on faith and dogma than on science and data.

Not unlike fundamentalists engaged in a jihad against unbelievers, these radical environmentalists pursue an agenda that has less to do with protection of the environment than with antipathy toward business, profits, and certain products and technologies. Ironically, their efforts to achieve their own narrow vision of what constitutes a "good society" often are inimical to protection of the environment -- a variation on the admission by *Peanuts* cartoon character Linus van Pelt, "I love humanity; it's people I can't stand."



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For example, exploiting a technicality that links the Endangered Species Act (ESA) to pesticide registration, environmental groups have filed a spate of nuisance lawsuits that attempt to prevent the Environmental Protection Agency from registering or re-registering pesticides. These suits take advantage of a legal technicality that links pesticide registration to the Endangered Species Act (ESA). They allege that by failing to put in place a process for consultation with the federal agencies that administer the ESA -- the National Marine Fisheries Service and Fish & Wildlife Service -- before registering a pesticide, the EPA has not complied fully with the law. This in spite of the fact that the Fish & Wildlife Service's ESA Consultation Handbook makes it clear that "[t]he Services cannot force an action agency to consult."

The environmentalists' lawsuits are not substantive but procedural: No actual damage to threatened or endangered species from the EPA's actions (or inactions) has been demonstrated. And never mind that pesticides control vermin, increase agricultural productivity, reduce the need to convert wild lands into farmland, prevent the growth of harmful fungi and bacteria on crops, reduce prices to consumers -- and that they undergo exhaustive testing and regulatory review to ensure their safety.

Substantive or not, the lawsuits constitute a nuisance and distraction for EPA officials, who must expend vast effort and expense on defending the agency in court - resources that could be better spent reviewing and approving new products, and on prosecuting dishonest manufacturers and polluters.

Although the ESA requires all federal agencies to ensure that their actions take into account possible adverse effects on endangered species, Congress recognized the value of pesticides by expressly directing that pesticide registration by the EPA under the Federal Insecticide, Fungicide and Rodenticide Act should "minimize the impacts to persons engaged in agricultural food and fiber commodity production and other affected pesticide users and applicators."

This is not the only instance in which misguided activists and their lawyers have obstructed government agencies charged with protecting public and environmental health. Last November, an activist coalition filed a lawsuit that seeks to stop the field testing of crop plants that produce pharmaceuticals -- so-called "biopharming." Again, the grounds for the suit were purely procedural. The groups claimed that "neither USDA nor any other government agency has prepared an Environmental Impact Statement . . ." to evaluate the safety of the field trials, and that this "lack of oversight violates the National Environmental Policy Act and the Endangered Species Act." And during my tenure at the FDA, the agency was constantly diverted and distracted by the need to

The
Wor
Food

defend against bad-faith lawsuits and by the need to respond to annoying, insubstantial "citizens' petitions."

The hidden agenda in all of these cases is activists' opposition to the use of certain kinds of technologies or products, and animus toward the companies that use or make them.

There is good news to report, however, about the lawsuits that are attempting to halt pesticide registration. The EPA, which boasts vast and comprehensive experience with assessing the potential risks of pesticides to plant and animal species -- including those listed as threatened or endangered under the ESA -- and other federal agencies have devised an appropriate solution to the procedural problem. The National Marine Fisheries Service and Fish and Wildlife Service, which administer the ESA, on January 30th proposed a rule that will eliminate the requirement for the EPA to consult with other agencies as the agency reviews and registers pesticides. This technical revision will not only assure greater consistency in the assessment of pesticides, but by freeing regulators to more expeditiously license more environment-friendly products, it will also better protect endangered species and their habitats. And, of course, it will moot the lawsuits.

Confounded by incomplete data and incessant pressure from radical groups and commercial interests, the formulation of environmental policy is difficult, to be sure, and assessing the risks and benefits of pesticides can be devilishly complex. This proposed rule will draw the battle lines clearly. Brandishing pseudo-facts, half-truths and warnings of apocalypse, the anti-pesticide, anti-technology, anti-agribusiness groups will oppose it, while genuine environmentalists will support it.

This change will not fix other existing flaws in the ESA, but it will prevent the legislation from interfering with the development and registration of an important class of agricultural and consumer products.


Henry Miller is a physician and fellow at the Hoover Institution. He was an official at the National Institutes of Health and FDA from 1977 to 1994. His most recent book, "The Frankenfood Myth: How Protest and Politics Threaten the Biotech Revolution," will be published later this year by Praeger Publishers.

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ATTACHMENT 3

The background of the entire page is a photograph of several salmon swimming in clear, shallow water. The fish are silvery with hints of pink and orange, and their shadows are visible on the light-colored, rocky or sandy bottom. The water is a pale blue-grey color.

Salmon Hazard

This product contains pesticides
that may harm salmon or steelhead.

Use of this product in urban
areas can pollute salmon streams.

This point of sale notification
was produced in compliance with a
January 22, 2004 Court Order,
to notify urban users about the
potential for **some** pesticides
to harm fish.